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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,106	09/10/2004	Tsukaya Hirokazu	47232-5010-00-US	4857
55694	7590	11/14/2006	EXAMINER	
DRINKER BIDDLE & REATH (DC) 1500 K STREET, N.W. SUITE 1100 WASHINGTON, DC 20005-1209			BAUM, STUART F	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/507,106	Applicant(s) HIROKAZU ET AL.	
	Examiner Stuart F. Baum	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 14-29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 14-16, 18-22, 24-26, 28-29, drawn to a polynucleotide in sense orientation; or construct comprising said polynucleotide operably linked to a promoter or a vector comprising said polynucleotide, or plant transformed therewith, or method for changing morphology of a plant comprising transforming a plant with said construct wherein said polynucleotide is expressed to produce a protein, or a composition of matter comprising a selected polypeptide.

Group II, claims 17, 23, 27, drawn to a construct or vector comprising a polynucleotide in antisense orientation or method comprising suppressing expression of a polynucleotide.

Group III, claim 27, drawn to a method for changing the morphology of a plant comprising stimulating a promoter.

The Office interprets "lined in inverse reading frame" to mean antisense orientation.

For the election to be complete, Applicants are to elect one DNA and one corresponding amino acid sequence from claim 14.

2. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: a polynucleotide having a nucleotide sequence as recited in claim 14, wherein at least one amino acid is deleted, substituted, or added, and which has stimulatory brassinosteroid biosynthesis activity is taught in the prior art. Koncz et al (1999, U.S. Patent Number 5,952,545) teach a nucleic acid molecule which alters brassinosteroid synthesis (claim 12). The Office interprets "a polynucleotide encoding a protein wherein at least one amino acid is deleted, substituted, or added" to read on a large number of nucleic acid molecules, because the Office interprets "wherein at least one amino acid is deleted, substituted, or added" to read on one amino acid residue.

3. In addition, the claims are not linked by a single technical feature because they are each drawn to products and processes not shared by the other. The polynucleotide in sense orientation of Group I is not linked or shared with the vector comprising a polynucleotide in antisense orientation of Group II, which is not linked or shared with the method of changing morphology of a plant comprising stimulating a promoter of Group III.

4. Applicants' chemical compounds, i.e., different DNA sequences encoding different polypeptides, each have different properties and different core structures that elicit different activities; and as such, the Groups I-III are not linked by, or share, a single special technical feature.

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5. Each of Inventions I-III are capable of being separately made, independently used and the patentability of one does not render the others obvious or unpatentable.

6. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by the literature and sequence searches required for each of the Inventions are not required for another of the Inventions, restriction for examination purposes as indicated is proper.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

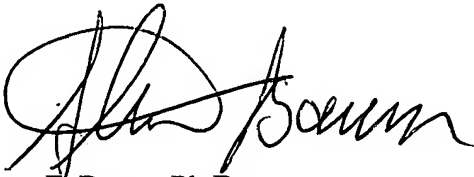
8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

A handwritten signature in black ink, appearing to read 'Stuart F. Baum', with a large, stylized initial 'S'.

Stuart F. Baum Ph.D.

Primary Examiner

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November 1, 2006

STUART F. BAUM, PH.D.
PATENT EXAMINER